

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AGERE SYSTEMS INC.,

Plaintiff,

Civil Action No. 02-864 (LDD)

v.

ATMEL CORPORATION,

Defendant.

**AGERE’S MOTION FOR JUDGMENT AS A MATTER OF LAW,
OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

For the reasons set forth below, Plaintiff Agere Systems Inc. (“Agere”) hereby moves under Fed. R. Civ. P. 50, 51 and 59 for the entry of judgment as a matter of law or, in the alternative, for a new trial. In accordance with the Court’s Order, Agere will file a memorandum in support of this motion not later than April 22, 2005.

Jury Instructions

Agere hereby renews its objections to the jury instructions, as stated fully in the parties “Joint Jury Charge With Additional Disputed Proposals and Related Objections” and as stated in open court prior to the Court’s instruction of the jury, including but not limited to:

1. The Court’s instructions to the jury with respect to the burden of proof regarding invalidity and willful infringement;
2. The Court’s instructions to the jury with respect to the doctrine of equivalents;
3. The Court’s instruction to the jury with respect to open-ended or “comprising” claims;
4. The Court’s failure to instruct the jury as Agere requested with respect to the independent presumption of validity of all claims;

5. The Court's failure to instruct the jury with respect to the requirements relating to "publications";

6. The Court's instructions to the jury with respect to anticipation; and

7. The Court's instructions to the jury with respect to obviousness and its failure to instruct the jury properly with respect to the requirement of motivation to combine.

Evidentiary Issues

Agere seeks a new trial based on the following evidentiary rulings by the Court.

1. The Court's decision to allow the surprise and prejudicial testimony of Dr. Rana, one of the inventors of the '335 patent, and to allow him to testify with respect to documents with respect to which he had no personal knowledge.

2. The Court's decision to allow uncorroborated testimony of Mr. Cronin with respect to alleged work at IBM (related to Exhibit 1111).

3. The Court's decision to preclude Dr. Kohl from testifying about testing he conducted on non-Atmel products, when Atmel refused to provide Atmel lead frames to either Dr. Kohl or Dr. Prince.

4. The Court's decision to allow Atmel to present evidence related to the Blewer and Suguro references.

5. The Court's decision to allow Atmel to advance a new invalidity theory with respect to the Chittipeddi '126 patent --anticipation -- for the first time at trial.

Agere seeks judgment as a matter of law, or, in the alternative, a new trial, for the following reasons.

Holschwandner '335 Patent

1. That the jury's decision that the asserted claims of the '335 patent are each anticipated by a single prior art reference is not supported by substantial evidence, or is against the weight of the evidence.

Chen '827 Patent

1. That the jury's decision that claims 1, 2 and 3 are obvious is: (1) incorrect as a matter of law in light of the evidence adduced at trial; or (2) is not supported by substantial evidence or is against the weight of the evidence.

Chittipeddi '126 Patent

1. That the jury's decision that Claim 6 is anticipated is not supported by substantial evidence or is against the weight of the evidence.

2. That the jury's decision that Claim 6 is not infringed is not supported by substantial evidence or is against the weight of the evidence.

3. That Claim 6 of the '126 patent is not obvious in light of the prior art.

Moyer '269 Patent

1. That the jury's decision that Claims 6 and 9 are not infringed is not supported by substantial evidence or is against the weight of the evidence.

2. That the jury's decision that Claim 6 is anticipated is not supported by substantial evidence or is against the weight of the evidence.

Dated: April 5, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2005, a copy of the foregoing AGERE'S MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL, was served on counsel for Defendant Atmel as set forth below:

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